

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

**NOTICE OF RESTORED GOVERNMENT FUNDING AND
STATUS REPORT**

As contemplated in the United States' "Application for a Stay" filed January 2, 2019 and the Court's Order of January 3, 2019 granting the requested stay, the United States files this notice of restoration of funding. The parties do not object to this notice.

At midnight on December 21, 2018, the appropriations act that had been funding the Department of Justice ("DOJ") expired and appropriations to the Department lapsed. An appropriations act providing funding to DOJ for a three-week period of time was enacted after business hours on Friday, January 25, 2019. Consequently, the undersigned DOJ attorneys are now authorized by law to resume work on civil matters, including matters that

are not "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

In the Government's application to stay the case, it requested that when funding was restored, "all current deadlines for the parties be extended commensurate with the duration of the lapse in appropriations." The period between the time that federal funding lapsed (December 22, 2018) and was restored (January 25, 2019) is 34 days. The last status hearing in this case was scheduled for January 4, 2019. The parties therefore propose extending the scheduled status hearing by 34 days. The proposed new status hearing date would be February 7, 2019.

On December 4, 2018, the parties advised that they did not have a signed Settlement Agreement, and the Court cancelled the settlement hearing scheduled for December 7, 2018 and scheduled a status conference call instead. Before and during the status conference call, just two weeks before the government shutdown, the parties advised that:

- 1) the settlement process involved obtaining authority from the two affected agencies, HHS and the EPA, as well as the appropriate officials within DOJ;
- 2) the undersigned DOJ attorneys have been diligently working to obtain that authority, including identifying the relevant personnel, who are HHS' Assistant Inspector General,

EPA's General Counsel, and the Assistant Attorney General for DOJ's Civil Division;

3) the parties have been communicating and answering questions via telephone and email from the affected agencies as well as the Civil Division and with each other about the proposed settlement;

4) the government has been drafting and reviewing internal memorandum requesting approval of the settlement, including relator's share, from both the U.S. Attorney's Office and the Civil Division;

5) the parties have been communicating regularly about the scope of the settlement agreement; and

6) the parties have been drafting, reviewing, and negotiating that written settlement agreement.

Those processes continued until the lapse of appropriations. On December 7, 2018, the government sent a draft settlement agreement to Duke and the Relator's counsel. The government received proposed changes from the Relator's attorneys on December 12, 2018 and from Duke's attorneys on December 14, 2108. On December 18, the government communicated with the Relator's counsel regarding the terms of the settlement agreement and specifically those terms involving only the relator and Duke. On December 21, 2018, the government

communicated with Duke's counsel regarding the terms of the settlement agreement.

On December 28, 2018, Duke was notified that HHS was funded and therefore, they could reach out to HHS officials identified by DOJ to discuss the release requests that did not lie within the authority of DOJ. Duke was able to communicate with HHS officials on January 24, 2019. Duke was also notified of additional officials at EPA but that EPA was not funded. Duke was able to discuss its request for releases with EPA officials this week. Those requests are under consideration at the affected agencies.

There remain issues in the proposed settlement agreement requiring the parties, DOJ, and agency input and review from multiple officials within several departments, which the parties are diligently working to resolve.

The government proposes that a status hearing or conference call be held on February 7, 2019 to update the court and the parties do not object.

Respectfully submitted, this the 1st day of February, 2019.

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